

1 SILVANO B. MARCHESI (SBN 42965)
2 County Counsel
3 JANET L. HOLMES (SBN 107639)
4 Deputy County Counsel
5 COUNTY OF CONTRA COSTA
6 651 Pine Street, 9th Floor
7 Martinez, California 94553
8 Telephone: (925) 335-1800
9 Facsimile: (925) 335-1866
10 email: jholm@cc.cccounty.us

11 Attorneys for Defendants
12 COUNTY OF CONTRA COSTA;
13 SHERIFF WARREN RUPF;
14 DEPUTY SHERIFF JUSTIN CHURCH

15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 JAN MAGNUSEN,

1 Plaintiff

1 v.

1 COUNTY OF CONTRA COSTA;
2 DEPUTY SHERIFF JUSTIN CHURCH,
3 INDIVIDUALLY AND IN HIS
4 OFFICIAL CAPACITY AS A DEPUTY
5 SHERIFF FOR THE COUNTY OF
6 CONTRA COSTA; WARREN RUPF,
7 INDIVIDUALLY AND IN HIS
8 OFFICIAL CAPACITY AS SHERIFF
9 FOR THE COUNTY OF CONTRA
10 COSTA; AND DOES ONE THROUGH
11 100,

12 Defendants.

No. C 07 4307 EDL

ANSWER TO COMPLAINT AND
DEMAND FOR JURY TRIAL BY DEPUTY
SHERIFF JUSTIN CHURCH

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendant Deputy Sheriff Justin Church (hereinafter “Defendant” or “Church”), in response to plaintiff’s unverified complaint, admits, denies and alleges as follows:

1 ANSWER
2

3 1. Responding to the first numbered paragraph of plaintiff's complaint, Defendant admits,
4 based on the allegations of the complaint, that jurisdiction and venue are proper in this
court.

5 2. Responding to the second numbered paragraph of plaintiff's complaint, Defendant
denies the allegations based on lack of information and belief.

6 3. Responding to the third numbered paragraph of plaintiff's complaint, Defendant denies
the allegations based on lack of information and belief.

7 4. Responding to the fourth numbered paragraph of plaintiff's complaint, Defendant
admits the allegations.

8 5. Responding to the fifth numbered paragraph of plaintiff's complaint, Defendant admits
the allegations of the first sentence and denies the allegations of the second sentence
based on lack of information and belief.

9 6. Responding to the sixth numbered paragraph of plaintiff's complaint, Defendant admits
the allegations of the first sentence and denies the allegations of the second sentence
based on lack of information and belief.

10 7. Responding to the seventh numbered paragraph of plaintiff's complaint, Defendant
denies the allegations based on lack of information and belief.

11 8. Responding to the eighth numbered paragraph of plaintiff's complaint, Defendant
denies the allegations of the first and second sentence, based on lack of information and
belief. Defendant denies the allegations of the third and fourth sentence. Defendant
denies the allegations of the fifth sentence.

12 9. Responding to the ninth numbered paragraph of plaintiff's complaint, Defendant denies
the allegations.

13 10. Responding to the tenth numbered paragraph of plaintiff's complaint, Defendant admits
the allegations of the first sentence and denies the remaining allegations.

14 11. Responding to the eleventh numbered paragraph of plaintiff's complaint, Defendant
admits the allegations of the first sentence and denies the remaining allegations, based

1 on lack of information and belief.

2 12. Responding to the twelfth numbered paragraph of plaintiff's complaint, Defendant
3 denies the allegations.

4 13. Responding to the thirteenth numbered paragraph of plaintiff's complaint, Defendant
5 denies the allegations.

6 14. Responding to fourteenth numbered paragraph of plaintiff's complaint, Defendant
7 denies the allegations.

8 15. Responding to the fifteenth numbered paragraph of plaintiff's complaint, Defendant
9 denies the allegations.

10 16. Responding to the sixteenth numbered paragraph of plaintiff's complaint, Defendant
11 denies the allegations.

12 17. Responding to the seventeenth numbered paragraph of plaintiff's complaint, Defendant
13 denies the allegations.

14 18. Responding to the eighteenth numbered paragraph of plaintiff's complaint, Defendant
15 denies the allegations.

16 19. Responding to the nineteenth numbered paragraph of plaintiff's complaint, Defendant
17 denies the allegations.

18

19 **AFFIRMATIVE DEFENSES**

20 20. **AS A FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to said
21 Complaint, and each and every cause of action set forth therein, Defendant alleges that
22 the allegations fail to state any claims upon which relief can be granted.

23 21. **AS A SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to said
24 Complaint, and each and every cause of action set forth therein, Defendant alleges that
25 the Church cannot be found liable by virtue of the doctrine of qualified immunity.

26 22. **AS A THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to said
27 Complaint, and each and every cause of action set forth therein, Defendant alleges that
28 plaintiff's claims are barred by the doctrines of waiver, estoppel and laches.

- 1 23. AS A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
- 2 Complaint, and each and every cause of action set forth therein, Defendant alleges that
- 3 at all times herein mentioned, all actions taken by Church were reasonable under the
- 4 circumstances and taken under a good faith belief that the actions were not unlawful
- 5 and Church is therefore immune under the Good Faith Immunity Doctrine.
- 6 24. AS A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
- 7 Complaint, and each and every cause of action set forth therein, Defendant alleges that
- 8 at all times herein mentioned Defendant County and its employees are privileged and
- 9 immune for the exercise of reasonable actions to effect a lawful detention and/or arrest
- 10 based on probable cause and attempted service of a valid temporary restraining order.
- 11 25. AS A SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
- 12 Complaint, and each and every cause of action set forth therein, Defendant alleges that
- 13 Defendant is immune from liability, and cannot be held liable for any injury that may
- 14 have been sustained by plaintiff, which injury Defendant specifically denies, and that
- 15 Defendant was at all relevant times performing duties in an objectively reasonable
- 16 manner, within lawful responsibilities, and is therefore immune from suit.
- 17 26. AS A SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
- 18 Complaint, and each and every cause of action set forth therein, Defendant alleges that
- 19 each claim and cause of action is barred by the failure of plaintiff to exhaust
- 20 administrative remedies.
- 21 27. AS A EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
- 22 Complaint, and each and every cause of action set forth therein, Defendant alleges that
- 23 in the event that the trier of fact finds any liability on the part of this answering
- 24 Defendant, which liability is herein denied, this answering Defendant will seek the
- 25 benefit of several liability for non-economic damages as provided in Civil Code
- 26 sections 1431 through and including 1431.5.
- 27 28. AS A NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
- 28 Complaint, and each and every cause of action set forth therein, public employee

1 defendant Church alleges the allegations of the complaint are insufficient to state or
2 support a claim for punitive damages.

3 29. AS A TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
4 Complaint, and each and every cause of action set forth therein, Defendant alleges
5 that as to any state law claims, each cause of action is barred under the provisions of
6 Government Code section 910, et seq., and Code of Civil Procedure section 313 for
7 failure to comply with requirements of filing a timely and sufficient tort claim and
8 failure to set forth in any tort claim filed the facts and theories that are set forth in the
9 pending Complaint.

10 30. AS AN ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
11 said Complaint, and each and every cause of action set forth therein, Defendant
12 alleges that the negligence of others, if any, was greater than the negligence of
13 Defendant, if in fact Defendant was negligent, and the liability, if any, of said
14 answering Defendant should be diminished in direct proportion to the fault, if any,
15 attributable to others as compared with that of said answering Defendant.

16 31. AS A TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
17 Complaint, and each and every cause of action set forth therein, the Church alleges
18 that it is immune pursuant to Government Code section 820.

19 32. AS A THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
20 said Complaint, and each and every cause of action set forth therein, Defendant
21 alleges that he is immune pursuant to Government Code sections 820.2 for exercise of
22 discretion.

23 33. AS A FOURTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
24 said Complaint, and each and every cause of action set forth therein, Defendant
25 alleges that he is immune pursuant to Government Code sections 820.4 for the
26 execution or enforcement of any law.

27 34. AS A FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
28 said Complaint, and each and every cause of action set forth therein, Defendant

1 alleges that he is not liable to the plaintiff pursuant to Government Code sections
2 820.6 .

3 35. AS A SIXTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
4 said Complaint, and each and every cause of action set forth therein, Defendant
5 alleges that any and all culpable acts, omissions, or conduct, if any, which allegedly
6 caused the injuries and damages sought in the Complaint on file in this action, were
7 caused by third parties and therefore answering Defendant is not liable to the plaintiff
8 pursuant to Government Code sections 820.8.

9 36. AS A SEVENTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
10 to said Complaint, and each and every cause of action set forth therein, Defendant
11 alleges that he is not liable to the plaintiff pursuant to Government Code section 821.

12 37. AS A EIGHTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
13 said Complaint, and each and every cause of action set forth therein, Defendant
14 alleges that he is not liable to the plaintiff pursuant to Government Code sections
15 821.6.

16 38. AS A NINETEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
17 said Complaint, and each and every cause of action set forth therein, Defendant
18 alleges that he is not liable to the plaintiff for execution of judicial or quasi-judicial
19 acts.

20 39. AS A TWENTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
21 said Complaint, and each and every cause of action set forth therein, Defendant
22 alleges that he is not liable for injuries caused by any misrepresentations to the
23 plaintiff pursuant to Government Code section 822.2 of the California Government
24 Code.

25 40. AS A TWENTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
26 to said Complaint, and each and every cause of action set forth therein, Defendant
27 alleges that the County and its employees are privileged and immune for their acts
28 taken pursuant to the provisions of the California Penal Code, and other pertinent

1 California codes pertaining to law enforcement.

2 41. AS A TWENTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE
3 DEFENSE to said Complaint, and each and every cause of action set forth therein,
4 Defendant alleges that he is immune pursuant to Civil Code section 47(a) .

5 42. AS A TWENTY-THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
6 to said Complaint, and each and every cause of action set forth therein, Defendant
7 alleges that the County and its employees are immune from liability pursuant to the
8 provisions of sections 810 through 895.8 of the California Government Code.

9 43. AS A TWENTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE
10 DEFENSE to said Complaint, and each and every cause of action set forth therein,
11 Defendant alleges that plaintiff's action is barred by the provisions of Code of Civil
12 Procedure sections 340(3), 342, and every other limitations period applicable to each
13 and every cause of action alleged in the complaint.

14 44. AS A TWENTY-FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
15 to said Complaint, and each and every cause of action set forth therein, Defendant
16 alleges that any and all of the acts or omissions alleged against him in the complaint
17 are the acts and omissions of agencies and officers of the State of California acting in
18 their official capacities, and that Defendant is therefore immune from suit under the
19 11th Amendment to the United States Constitution.

20 45. AS A TWENTY-SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
21 to said Complaint, and each and every cause of action set forth therein Church alleges
22 that, in conducting the activities giving rise to plaintiff's Complaint, he acted without
23 malice and oppression, and without intent to harm plaintiff and without conscious
24 disregard for plaintiff's rights or safety, and therefore punitive damages can not be
25 awarded against any of Defendants.

26
27 WHEREFORE, Defendants pray for the following relief:
28 a. That plaintiff take nothing by his Complaint and that Defendant be dismissed;

- b. That Defendant be awarded costs;
- c. That Defendant be awarded attorneys fees; and
- d. For such other relief that the court deems just and proper.

JURY REQUEST

Defendant requests a trial by jury.

DATED: December 4, 2007

**SILVANO B. MARCHESI
COUNTY COUNSEL**

/S/

By:

JANET L. HOLMES
Deputy County Counsel
Attorneys for Defendants
COUNTY OF CONTRA COSTA,
SHERIFF WARREN RUPF AND
DEPUTY SHERIFF JUSTIN
CHURCH